

AMENDED IN ASSEMBLY JANUARY 26, 2010

AMENDED IN ASSEMBLY JANUARY 11, 2010

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 743

Introduced by Assembly Member Portantino

February 26, 2009

An act to amend Sections 362.1 and 16002 of, ~~to add Section 362.5 to,~~ and to repeal and add Section 16010.6 of, the Welfare and Institutions Code, relating to foster care.

LEGISLATIVE COUNSEL'S DIGEST

AB 743, as amended, Portantino. Foster care: sibling placement.

Existing law provides for the placement of dependent children by the juvenile court according to specified procedures. Existing law declares the policy of the Legislature relating to foster care, including that foster care should be a temporary method of care for children and that reunification with the natural parent or parents or another alternate permanent living situation such as adoption or guardianship is more suitable to a child's well-being than is foster care.

~~Under existing law, a social worker who takes a minor into custody is required to place the minor together with any siblings or half-siblings who are detained, to the extent that it is practical and appropriate, or to include a statement in a specified report as to why that placement would not be appropriate.~~

~~This bill would require the social worker to make reasonable efforts to place the child and his or her siblings or half-siblings together unless~~

~~a court determines that that placement would be contrary to the safety or well-being of any or all of the siblings or half-siblings.~~

Existing law requires any order placing a dependent child in foster care, and ordering reunification services, to provide for visitation between the child and any sibling, unless the court finds by clear and convincing evidence that sibling interaction is detrimental to either child.

This bill would, instead, require the order to provide for visitation unless the court finds by clear and convincing evidence that the interaction is contrary to the safety or well-being of either child.

Existing law requires the responsible local agency to make diligent efforts in all out-of-home placements of dependent children to develop and maintain sibling relationships. If siblings are not placed together, the social worker is required to explain why those efforts are not appropriate. ~~Existing law also requires diligent efforts to be made to provide for ongoing and frequent interaction among siblings.~~

This bill would, instead, require the social worker, if siblings are not placed together, to explain why those efforts are contrary to the safety or well-being of any sibling. ~~It would also require reasonable efforts to be made to provide for ongoing and frequent sibling interaction.~~

Existing law requires, as soon as possible after a placing agency makes a decision with respect to a placement or a change in placement of a dependent child, the placing agency to notify the child's attorney and provide specified information.

This bill would recast and revise the above requirements relating to the placement of siblings, including requiring the placing agency to make a specified notification to the child's attorney and the child's sibling's attorney when a planned change of placement will result in the separation of siblings currently placed together.

By increasing the duties of social workers and county placing agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 362.1 of the Welfare and Institutions
2 Code is amended to read:

3 362.1. (a) In order to maintain ties between the parent or
4 guardian and any siblings and the child, and to provide information
5 relevant to deciding if, and when, to return a child to the custody
6 of his or her parent or guardian, or to encourage or suspend sibling
7 interaction, any order placing a child in foster care, and ordering
8 reunification services, shall provide as follows:

9 (1) (A) Subject to subparagraph (B), for visitation between the
10 parent or guardian and the child. Visitation shall be as frequent as
11 possible, consistent with the well-being of the child.

12 (B) No visitation order shall jeopardize the safety of the child.
13 To protect the safety of the child, the court may keep the child's
14 address confidential. If the parent of the child has been convicted
15 of murder in the first degree, as defined in Section 189 of the Penal
16 Code, and the victim of the murder was the other parent of the
17 child, the court shall order visitation between the child and the
18 parent only if that order would be consistent with Section 3030 of
19 the Family Code.

20 (2) Pursuant to subdivision (b) of Section 16002, for visitation
21 between the child and any siblings, unless the court finds by clear
22 and convincing evidence that sibling interaction is contrary to the
23 safety or well-being of either child.

24 (3) If the child is a teen parent who has custody of his or her
25 child and that child is not a dependent of the court pursuant to this
26 chapter, for visitation among the teen parent, the child's
27 noncustodial parent, and appropriate family members, unless the
28 court finds by clear and convincing evidence that visitation would
29 be detrimental to the teen parent.

30 (b) When reunification services are not ordered pursuant to
31 Section 361.5, the child's plan for legal permanency shall include
32 consideration of the existence of and the relationship with any
33 sibling pursuant to Section 16002, including their impact on
34 placement and visitation.

35 (c) As used in this section, "sibling" means a child related to
36 another person by blood, adoption, or affinity through a common
37 legal or biological parent.

1 ~~SEC. 2. Section 362.5 is added to the Welfare and Institutions~~
2 ~~Code, to read:~~

3 ~~362.5. Notwithstanding any other provision of law, a social~~
4 ~~worker shall make reasonable efforts to place the child together~~
5 ~~with any siblings or half-siblings who are also detained, unless a~~
6 ~~court determines by clear and convincing evidence that a joint~~
7 ~~placement would be contrary to the safety or well-being of any~~
8 ~~sibling or half-sibling. If a court determines that a joint placement~~
9 ~~is contrary to the safety or well-being of a sibling or half-sibling,~~
10 ~~the placing agency shall provide for frequent visitation or other~~
11 ~~ongoing interaction between the siblings or half-siblings, or both,~~
12 ~~unless the placing agency can document that the visitation or~~
13 ~~interaction would be contrary to the safety or well-being of any or~~
14 ~~all of the siblings or half-siblings.~~

15 ~~SEC. 3.~~

16 ~~SEC. 2.~~ Section 16002 of the Welfare and Institutions Code is
17 amended to read:

18 16002. (a) It is the intent of the Legislature to maintain the
19 continuity of the family unit, and ensure the preservation and
20 strengthening of the child's family ties by ensuring that when
21 siblings have been removed from their home, either as a group on
22 one occurrence or individually on separate occurrences, ~~reasonable~~
23 ~~efforts will be made to place the siblings~~ *the siblings will be placed*
24 in foster care together, unless it has been determined that placement
25 together is contrary to the safety or well-being of any sibling. The
26 Legislature recognizes that in order to ensure the placement of a
27 sibling group in the same foster care placement, placement
28 resources need to be expanded.

29 (b) The responsible local agency shall make ~~reasonable efforts~~
30 *a diligent effort* in all out-of-home placements of dependent
31 children, including those with relatives, to develop and maintain
32 sibling relationships. If siblings are not placed together in the same
33 home, the social worker shall explain why the siblings are not
34 placed together and what efforts he or she is making to place the
35 siblings together or why those efforts are contrary to the safety or
36 well-being of any sibling. When placement of siblings together in
37 the same home is not possible, ~~reasonable efforts~~ *a diligent effort*
38 shall be made, and a case plan prepared, to provide for ongoing
39 and frequent interaction among siblings until family reunification
40 is achieved, or, if parental rights are terminated, as part of

1 developing the permanent plan for the child. If the court determines
2 by clear and convincing evidence that sibling interaction is contrary
3 to the safety or well-being of any sibling, the reasons for the
4 determination shall be noted in the court order, and interaction
5 shall be suspended.

6 (c) When there has been a judicial suspension of sibling
7 interaction, the reasons for the suspension shall be reviewed at
8 each periodic review hearing pursuant to Section 366. When the
9 court determines that sibling interaction can be safely resumed,
10 that determination shall be noted in the court order and the case
11 plan shall be revised to provide for sibling interaction.

12 (d) If the case plan for the child has provisions for sibling
13 interaction, the child, or his or her parent or legal guardian shall
14 have the right to comment on those provisions. If a person wishes
15 to assert a sibling relationship with a dependent child, he or she
16 may file a petition in the juvenile court having jurisdiction over
17 the dependent child pursuant to subdivision (b) of Section 388.

18 (e) If parental rights are terminated and the court orders a
19 dependent child to be placed for adoption, the licensed county
20 adoption agency or the State Department of Social Services shall
21 take all of the following steps to facilitate ongoing sibling contact,
22 except in those cases provided in subdivision (b) where the court
23 determines by clear and convincing evidence that sibling interaction
24 is contrary to the safety or well-being of the child:

25 (1) Include in training provided to prospective adoptive parents
26 information about the importance of sibling relationships to the
27 adopted child and counseling on methods for maintaining sibling
28 relationships.

29 (2) Provide prospective adoptive parents with information about
30 siblings of the child, except the address where the siblings of the
31 children reside. However, this address may be disclosed by court
32 order for good cause shown.

33 (3) Encourage prospective adoptive parents to make a plan for
34 facilitating postadoptive contact between the child who is the
35 subject of a petition for adoption and any siblings of this child.

36 (f) Information regarding sibling interaction, contact, or
37 visitation that has been authorized or ordered by the court shall be
38 provided to the foster parent, relative caretaker, or legal guardian
39 of the child as soon as possible after the court order is made, in
40 order to facilitate the interaction, contact, or visitation.

1 (g) As used in this section, “sibling” means a child related to
2 another person by blood, adoption, or affinity through a common
3 legal or biological parent.

4 (h) The court documentation on sibling placements required
5 under this section shall not require the modification of existing
6 court order forms until the Child Welfare Services Case
7 Management System is implemented on a statewide basis.

8 ~~SEC. 4.~~

9 *SEC. 3.* Section 16010.6 of the Welfare and Institutions Code
10 is repealed.

11 ~~SEC. 5.~~

12 *SEC. 4.* Section 16010.6 is added to the Welfare and Institutions
13 Code, to read:

14 16010.6. (a) As soon as a placing agency makes a decision
15 with respect to a placement or a change in placement of a
16 dependent child, but not later than the end of the following business
17 day, the placing agency shall notify the child’s attorney and provide
18 to the child’s attorney information regarding the child’s address,
19 telephone number, and caregiver.

20 (b) Absent exigent circumstances, as soon as a placing agency
21 becomes aware of the need for a change in placement of a
22 dependent child that will result in the separation of siblings
23 currently placed together, the placing agency shall notify the child’s
24 attorney and the child’s siblings’ attorney of this separation no
25 less than 10 calendar days prior to the planned change of placement
26 so that the attorneys may investigate the circumstances of the
27 proposed separation. In an emergency, the placing agency shall
28 provide notice as soon as possible, but no later than 24 hours from
29 the change of placement. This notification shall be deemed
30 sufficient notice for the purposes of subdivision (a).

31 (c) When the required notice is given prior to a change in
32 placement, the notice shall include information regarding the
33 child’s address, telephone number, and caregiver or any one or
34 more of these items of information to the extent that this
35 information is known at the time that the placing agency provides
36 notice to the child’s attorney. When the required notice is given
37 after the change in placement, notice shall include information
38 regarding the child’s address, telephone number, and caregiver.

39 (d) The Judicial Council shall adopt a rule of court directing the
40 attorney for a child for whom a dependency petition has been filed,

1 upon receipt from the agency responsible for placing the child of
2 the name, address, and telephone number of the child's caregiver,
3 to timely provide the attorney's contact information to the caregiver
4 and, if the child is 10 years of age or older, to the child. This rule
5 does not preclude an attorney from giving contact information to
6 a child who is younger than 10 years of age.

7 ~~SEC. 6.~~

8 *SEC. 5.* If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.